

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOSE DE LA ROSA ORTIZ,

Case No. 6:10-cv-922-TC

Petitioner,

ORDER

v.

MARK NOOTH,

Respondent.

Aiken, Chief Judge:

Magistrate Judge Coffin issued his Findings and Recommendation in the above-captioned case on March 12, 2012. Magistrate Judge Coffin recommends that the petitioner's petition for writ of habeas be denied for lack of exhaustion and procedural default. The matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v.

Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Petitioner timely filed objections to the Findings and Recommendation. Upon de novo review, I find no error in Magistrate Judge Coffin's findings and analysis. Petitioner failed to fairly present his claims, they are now barred by procedural default, and petitioner fails to establish a miscarriage of justice or a credible claim of actual innocence.

THEREFORE, IT IS HEREBY ORDERED that Magistrate Judge Coffin's Findings and Recommendation (doc. 43) filed March 12, 2012 is ADOPTED, and the petitioner for writ of habeas corpus (doc. 1) is DENIED. The Clerk is directed to enter judgment in accordance with this Order.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability is denied as petitioner has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated this 13th day of July, 2012.



Ann Aiken
United States District Judge